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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 18 August 1992, at 3 p.m.

Chairman: Mr. ALFONSO MARTINEZ

later: Mrs. KSENTINI

CONTENTS

The administration of justice and the human rights of detainees (continued)

(a) Question of the human rights of persons subjected to any form of detention or imprisonment

(b) Question of human rights and states of emergency

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GE.92-13332/4811B (E)

CONTENTS (continued)

(c) Individualization of prosecution and penalties, and repercussions of violations of human rights on families

(d) The right to a fair trial

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (continued)

The meeting was called to order at 3.15 p.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (continued)

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(d) THE RIGHT TO A FAIR TRIAL.

(E/CN.4/Sub.2/1992/17-19; E/CN.4/Sub.2/1992/20 and Add.1; E/CN.4/Sub.2/1992/21-23; E/CN.4/Sub.2/1992/24 and Add.1-3; E/CN.4/Sub.2/1992/NGO/11-13; E/CN.4/Sub.2/1992/NGO/20; E/CN.4/Sub.2/1991/7, 23 and 26; E/CN.4/Sub.2/1991/28/Rev.1; E/CN.4/Sub.2/1991/29; E/CN.4/Sub.2/1991/56; E/CN.4/1992/13-14; A/46/703 and Corr.1; A/C.5/46/4)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued)

(E/CN.4/Sub.2/1992/25 and Add.1; E/CN.4/Sub.2/1992/NGO/11; E/CN.4/Sub.2/1991/30 and Add.1-4)

1. Mr. VO VAN AI (International Federation of Human Rights), speaking on agenda items 10 and 11, said that the International Federation of Human Rights (IFHR) and its affiliate, the Viet Nam Committee on Human Rights, were extremely concerned about the many attacks on freedom of conscience, opinion, religion and expression in the Socialist Republic of Viet Nam, where the rights guaranteed in principle by the Constitution were being drastically restricted by the application of the Code of Criminal Procedure, whose provisions on national security were regularly invoked in order to arrest and imprison citizens who peacefully expressed opinions or beliefs other than those professed by the Communist Party. The recent trials reported in IFHR's written submission under agenda item 6 (E/CN.4/Sub.2/1992/NGO/13) were an example.

2. The systematic application of those provisions was the main instrument used in the policy of religious discrimination pursued by the Government against the Unified Buddhist Church of Viet Nam (EBUVN), which was known for its non-violent positions on national reconciliation and peace. Since 1975 the Communist authorities had systematically arrested a large number of senior Buddhist monks and had taken over all the religious, cultural, social and charity institutions of EBUVN in order to instal in its place a State church in 1982. Despite the persistent persecution the EBUVN leaders had continued to pursue their campaign for human rights against religious intolerance and State control. Many of them had been arrested and detained for doing so, without being informed of the reasons or being accorded a fair trial. In 1990 one of them, Thich Huyen Quang, had been wrongly reported by the delegation of

Viet Nam to be free. In the cases of some leaders, long confinements in their villages of origin even violated articles 10, 69 and 71 of the Code of Criminal Procedure.

3. Also deplorable were the Government's attempts to politicize Buddhist religious activities, particularly at the funeral of Patriach Thich Don Hau who, contrary to the statement made by the observer for Viet Nam in the Sub-Commission, had ceased to be a member of the Central Committee of the Fatherland National Front in 1978, when he had resigned as a protest against the arbitrary arrest and imprisonment of many Buddhist monks.

4. The IFHR and its Vietnamese affiliate were convinced that the persistent violation of human rights in general, and the persecution of Buddhists in particular, constituted serious obstacles to the possible development of a democratic society in Viet Nam. As it had already informed the authorities, IFHR was willing to send an international mission of inquiry to Viet Nam to take stock of the human rights situation. In the absence of a reply from the authorities or in the event of a negative reply, it would have to conclude that the only explanation of the many cases of arbitrary detention was the intention of the authorities to carry out a real policy of discrimination

5. Mr. MANNA (International Federation of Human Rights) said that IFHR and its Syrian affiliate, the Committee for the Defence of Democratic Freedoms and Human Rights (CDF) were extremely concerned about the continuation, since 8 March 1963, of the state of emergency in Syria and its tragic consequences for society. Over two thirds of the Syrian population had been born after the declaration of the state of emergency and the climate was one of panic, even psychosis. People were afraid of speaking, of listening, of joking or even of being serious. Persons had disappeared, but their relatives were afraid to publicize the information.

6. The state of emergency, by creating a parallel system and an apparatus of oppression to defend it, had had the effect of marginalizing the judicial system for the benefit of extrajudicial structures. The concept of law was stifled by that of power. Human rights activists became the target of all those whose who benefited from the state of emergency. For example, on 17 May 1992 the State Security Court had sentenced, at the end of an unfair trial and because they belonged to CDF, 10 CDF members to sentences of up to 10 years' imprisonment with forced labour and deprivation of civil rights. The number of political prisoners in the country exceeded 7,000, almost 3,000 persons had disappeared, dozens had died under torture, and there were 200 sick prisoners. IFHR and CDF urged the Sub-Commission to take all the necessary steps to put an end to the state of emergency and to restore a constitutional State in Syria as soon as possible.

7. In Togo, an international IFHR mission sent in June 1992 to inquire into the events at Soudou had established the responsibility of the armed forces in the attack on Gilchrist Olympio and his companions. In the absence of judicial proceedings against those responsible for that attack, the continuation of the democratic process might be seriously impaired.

8. An IFHR mission to Brazil in February 1992 had ascertained that the murderers of street children even enjoyed the protection of the police, of which they were often members. That situation required an appropriate international response. IFHR therefore hoped that the Sub-Commission would proceed further with the work begun by Mr. Joinet and Mr. Guisse on the subject.

9. IFHR wished to draw the Sub-Commission's attention to the situation in China, where the police and judicial repression carried out since the spring of 1989 was continuing with the same intensity in total disregard of the right to a fair trial. Particularly affected was the right to be assisted by a lawyer. IFHR urged the Sub-Commission to adopt a resolution calling upon China to conform to the provisions of international instruments relating to the administration of justice.

10. IFHR and its affiliate, the Egyptian Organization for Human Rights (EODH), had continually expressed their concern about the consequences of the state of emergency that had been in force for 11 years. There had been several thousands of cases of arbitrary detention and torture had been systematically used in prisons. The latter was one of the main causes of the rise in violence in the Government's present struggle against religious extremism. IFHR and OEDH, which had firmly condemned the acts of violence committed by certain extremist Islamic groups, particularly against freedom of opinion and of expression, called upon the authorities to take all the necessary measures to put an end to the use of torture by those responsible for applying the law.

11. The remedies of habeas corpus and amparo were among the most effective in the campaign against torture. IFHR accordingly welcomed the conclusions reached by Mr. Treat and Mr. Chernichenko to the effect that there could be no derogation from those rights. IFHR urged the Sub-Commission to endorse those conclusions by including them in a formal resolution.

12. Ms. BRIDEL (International Association of Democratic Lawyers), speaking on agenda item 10 (a), said that there was still a critical detention problem in Japan. Before and during the Second World War, during the era of militarism in Japan, forced confessions had been obtained by the use of barbarous tortures as well as by long periods of detention under the Kangoku system. However, even under the new Constitution, which proclaimed democracy and respect for human rights, those practices still prevailed, and the Japanese Government had introduced two detention laws aimed at perpetuating the Kangoku system. Many people had the feeling that the ruling forces hoped to use the Kangoku system for controlling the population again, as they had done during the war.

13. A well-known instance was the Yokohama Jiken case in the years 1942 to 1945, concerned with a large-scale suppression of the press in which many publishers and editors had been involved. Among the many victims in the case, in 1986 nine persons had requested a retrial on the grounds that the evidence of confession had been obtained by torture committed by the police during detention in custody. The district court and the higher court had declared that the documents in the case had apparently been burnt during the confusion

following the surrender at the end of the war. Consequently there could be no retrial. The Supreme Court had approved that decision on 14 March 1991.

14. It must, however, be pointed out that the documents concerned had been kept in the custody of the judicial office. So the rejection of the request for a retrial on the grounds of lack of documents was intended to deprive the victims of the right of access to the courts guaranteed by article 32 of the Japanese Constitution. The Sub-Commission was requested to draw the necessary attention to the case.

15. Speaking on agenda item 10 (d), she said that the defence lawyers in the trial of leaders of the Islamic Salvation Front in Algeria were respecting their obligations under the act of 8 January 1991. They needed no lessons in professional ethics from anyone, least of all from the Military Prosecutor. The defence had acted in accordance with the law and had pointed out that article 88 of the Code of Military Justice stipulated that the court could declare irregular procedures to be null and that article 150 of the same Code permitted the defence to raise such irregularities in court. It was therefore incorrect to state, as the Military Prosecutor had done, that the committal order remedied all the invalidities. The Military Prosecutor had also omitted to inform the media that he had refused to call witnesses for the defence whose names had been communicated to him within the prescribed period before the hearing. Moreover, the political nature of the trial was confirmed by the summoning of political leaders, including ministers, by the fact that the accused were leaders of a majority political party that had been legal at the time, by the importance attached to the case by the media and national and international public opinion, and by the use made of the public media by the military prosecution.

16. As far as jurisdiction was concerned, it was generally admitted that military courts were not competent to try civilians not involved in military offences. In the case in point, the Code of Military Justice, which dated from 1971, when there had been only one party and the country had been without a constitution, had provided for the possibility of trying civilians accused of offences against State security carrying sentences of more than five years' imprisonment. However, that jurisdiction had been withdrawn when the State Security Court had been established. When the latter court had been abolished, the cases pending before it had been transferred to the ordinary criminal courts. Furthermore, the jurisdiction of the military court ran counter to several universally recognized principles of law - non-retroactivity, the primacy of legislation over decrees, the presumption of innocence and the right to a public trial, recognized in article 11 of the Universal Declaration of Human Rights. No legal text restricted publicity or access to the military court on the grounds of "national sovereignty" or "military territory". Accordingly, the defence had requested that publicity be assured fully and without restriction in accordance with international law through the presence of legal observers from non-governmental organizations concerned with human rights and the international press. Finally, the defence announced that, in view of the many irregularities in the trial proceedings and the absence of minimum guarantees, on the instructions of its clients, it had a duty to withdraw from the hearing, although it was prepared to participate in the trial if the law was strictly respected.

17. In that context it should be borne in mind that the country had been experiencing a virtual civil war since January 1992, with hundreds of victims. Thousands of persons had been arrested and interned in camps in the Sahara desert in very difficult conditions on the ground of mere suspicion or for their opinions. Hundreds of others had been sentenced for participating in peaceful demonstrations. Very heavy sentences were imposed. "Fake" trials discredited the military courts, as did the violation of the most elementary rules of law, including the repressive Code of Military Justice. The military prosecutors had refused to take up the case of an officer who, in the performance of his duties, had murdered President Boudiaf, whereas the military courts declared themselves competent to try civilians, particularly the leaders of the Islamic Salvation Front, which had become the majority party in the country as a result of the revulsion of young people at the widespread corruption of the leaders and their despair when faced with the cynicism of the politico-financial mafia.

18. The trial that had taken place in July 1992 before the Blida military court had alienated large sections of the population. The violation of the rights of the defence, the refusal to admit the press and international observers, the irregularities of all kinds committed during the preliminary inquiry, and the abuses perpetrated by the military prosecutor had led the accused and their lawyers to refuse to participate in such a parody of justice. Even in their absence, the evidence given by other persons had shown the charges to be false. Nevertheless, the court, obeying the orders of the military authorities, had handed down heavy sentences against the accused. Those sentences had caused waves of demonstrations in which the army had fired on the participants, killing and wounding dozens of people. The accused had appealed. The military prosecutor, after welcoming the sentence, had also appealed.

19. The International Association of Democratic Lawyers denounced the abduction of Mr. Zebiri of the Algiers Bar by an armed group of Islamic extremists who were alleged to have executed him summarily. It denounced all acts of violence wherever they came from and hoped that a political solution could be found through respect for human rights and democracy.

20. Mr. JONES (Human Rights Advocates), speaking on agenda item 10, drew attention to the discriminatory treatment of African-Americans by the police and the criminal justice system in the United States of America, as exemplified in the Los Angeles incidents. Similar abuses occurred with other minority communities as well, particularly the Latino community. However, the focus of his statement would be on the African-American community.

21. While the United States of America was now a party to the International Covenant on Civil and Political Rights and protected the rights of detainees, it did not apply justice equally in accordance with the Universal Declaration of Human Rights and the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, as well as numerous other human rights instruments. The response to the verdict in the Los Angeles police brutality case had dramatically brought world attention to the severity of the existing injustice and the frustration and anger of the minority community. Law

enforcement authorities in Los Angeles had detained more than 12,000 people, many without probable cause, and had pressured a large number of them to plead guilty to lesser charges in order to escape further detention.

22. The events in Los Angeles must be seen in the context of the discriminatory treatment of African-Americans in the criminal justice system. For example, shortly before the "riots" in Los Angeles, a 14-year-old African-American girl had been shot in the back of the head and killed by a store-owner who had apparently believed she was stealing a bottle of orange juice. The shopkeeper had been convicted of voluntary manslaughter, but the white judge had imposed only probation, without even a day in jail. Furthermore, there had been a number of suspicious police shootings of African-Americans, Latinos and other non-whites, as well as the exposure of a white-supremacist gang that was still operating with impunity in the Los Angeles County Sheriff's Department. Then had come the verdict in the Rodney King brutality case, in which four white policeman who had savagely beaten an African-American had been acquitted.

23. If the Rodney King case had in fact been an anomaly, it would be encouraging to note that the United States Justice Department had decided to bring further charges against the four white policemen. However, the unequal treatment of minorities within the criminal justice system was deeply entrenched in the United States and needed the attention of the Sub-Commission. The systematic discrimination was shown by the fact that, while the African-American community made up only 12 per cent of the United States population, 40 per cent of those incarcerated in the United States were African-American, 25 per cent of all African-Americans were imprisoned, on parole, or on probation, 70 per cent of African-American males living in Washington DC had been arrested by the age of 35, and 85 per cent in their lifetime, an African-American male was more likely to be jailed than a black male in South Africa, African-American males were more likely to go to jail than to college, and 40 per cent of inmates of death row were African-Americans. Those statistics and the failure of the criminal justice system in Los Angeles exemplified the de facto dual system of justice existing in the United States. Such de facto discrimination persisted in spite of the dismantling, nearly a quarter of a century previously, of the de jure system of segregation.

24. Consequently, Human Rights Advocates urged the Sub-Commission to request its Special Rapporteurs under the item on the administration of justice and the human rights of detainees to examine the concerns expressed and to study ways in which the administration of justice in the United States could be carried out in a non-discriminatory manner.

25. Ms. RISHMAWI (International Commission of Jurists), speaking on agenda item 11, welcomed Mr. Joinet's report on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1992/25), particularly his thoughtful conclusions and recommendations for dealing with that crucial topic in future. There was certainly a need for the Sub-Commission to continue its involvement in the protection of jurists. That was clearly illustrated by a report which the Centre for the Independence of Judges and Lawyers (CIJL) was releasing today. Entitled Attacks on Justice, it clearly demonstrated that in too many

countries of the world violence against judges and lawyers continued to escalate, cataloguing the cases of 447 jurists in 46 countries who had suffered reprisals for carrying out their professional functions.

26. The world's conscience had been shocked by the killing of Italian judges Falcone and Borsellino at the hands of the Mafia. Yet attacks against the Colombian judiciary also occurred frequently; in 1992, at least 18 judicial officers had been killed and death threats had been made against at least 21 others. A study conducted by the Colombian section of the Andean Commission of Jurists had revealed that since 1979 an average of 25 judges and lawyers had been killed or had suffered attempts on their life every year and that in 80 per cent of the cases a criminal investigation had not been opened. Indeed, too many jurists in the world continued to receive threats against their lives, in attempts to deter them from pursuing their professional human rights duties. In addition to Colombian judges and lawyers, jurists faced such risks particularly in Brazil, Ecuador, El Salvador, Guatemala, the Philippines, Rwanda, Turkey and Sri Lanka. Even jurists operating in Western countries were not immune. CIJL had received reliable information regarding 11 human rights lawyers who lived under constant threats from the police in Northern Ireland.

27. In spite of the risks, jurists continued to be at the forefront of the struggle for the respect of human rights and fundamental freedoms in many parts of the world. It was precisely because of that commitment that 11 jurists had been arbitrarily detained and some even tortured in Kenya. In Nigeria, human rights lawyers had been arrested because they had joined the call for civilian rule in their country.

28. In Syria at least 22 lawyers were currently detained under the state of emergency that had been in force since 1963. ICJ/CIJL had been able to observe the trial of advocate Aktham Nouiaisseh, who had been tried because of his involvement with the Committee for the Defence of Democratic Freedoms and Human Rights in Syria. Despite clear signs of torture on his body, Nouiaisseh had been sentenced to 9 years' imprisonment. Judges and lawyers were also victims of unfair trials conducted by exceptional courts in Ghana, Iran, Pakistan, Myanmar and Turkey.

29. In the Israeli-occupied Palestinian territories, military courts regularly tried civilians. The serious structural defects of that legal system prevented lawyers from adequately rendering their professional services to their clients. In addition, members of the legal community often faced harassment and intimidation.

30. Even in the United States, lawyers were discouraged from taking up unpopular causes. During the past year, human rights lawyers had been subjected to monetary fines under a special procedure designed to prevent "groundless" law suits and "frivolous" arguments.

31. Regarding professional sanctions, since September 1992 at least 17 judges, the majority of them women, had been dismissed in the Sudan, and the Government had gone so far as to confiscate the property of self-exiled human rights lawyers. Still worse was the situation in Peru, where 30 prosecutors and 137 magistrates, including 16 Supreme Court judges,

had been dismissed in the month following President Fujimori's clampdown on State institutions. In Malaysia, a bill intended to prevent lawyers from handling public interest matters had failed to go through, thanks to the efforts of many Malaysian jurists. Even measures which might be considered positive had adverse aspects: the restructuring of the court system by the Government of Senegal, for instance, had hampered not only the independence of the judiciary, but also adequate recourse to justice. The Supreme Court had been abolished at a time when the newly established high courts were not yet institutionalized. Furthermore, the High Council of the Judiciary had been suspended for a transitional period, and its powers granted to the President of the Republic. Judges in Mali and Yemen had gone on strike in support of their demand for guarantees of their independence.

32. Those examples illustrated the importance of continued involvement by the Sub-Commission in the protection of judges' and lawyers' independence, which constituted the backbone of the legal protection of human rights.

33. Mr. Joinet had been correct in pointing to a lack of awareness on the part of judges and lawyers of international standards relating to the independence of the judiciary and the legal profession. The International Commission of Jurists endorsed his proposal that the United Nations Crime Prevention Branch in Vienna should be entrusted with promoting standards, while the Centre for Human Rights in Geneva should focus on monitoring application. Mr. Joinet's reports mapped out the path that the Sub-Commission might wish to adopt in the longer term in dealing with the theme of the independence of the judiciary. His mandate should be broadened so as to enable him to carry out independent investigations into situations of concern and conduct country visits. He might also wish to provide specific recommendations on country situations, to be taken into account in the relevant United Nations advisory services programmes.

34. Mr. ARTUCIO (International Commission of Jurists), speaking on agenda item 10, indicated his organization's concern at the apparent legalization of the practice of abducting persons across international frontiers, which constituted a gross violation of the victims' rights and jeopardized the jurisdictional sovereignty of States. He was referring specifically to the June 1991 decision of the United States Supreme Court in the case United States vs. Alvarez-Machain, which had ruled that the abduction in Mexico by United States agents of a Mexican citizen suspected of involvement in a murder committed on Mexican soil was legal. Clearly, only the Mexican courts were empowered to try that case, and there could be no justification for such an abduction. At the request of various States, the Permanent Council of the Organization of American States had requested the Inter-American Juridical Committee to deliver a legal opinion on the legitimacy of that decision. His organization welcomed that reaction and shared the concern of the American States at such unconventional forms of extradition.

35. Mr. RODRIGUEZ (Andean Commission of Jurists), speaking on agenda items 10 and 11, said that the Andean countries faced the common challenge of consolidating their democratic institutions so that the constitutional regimes predominant in the region could become authentic democracies affording full enjoyment of human rights. Unfortunately, grave social and economic crises

had destabilized their main institutions, including the administration of justice, which lacked the capacity to process social conflicts effectively, particularly in countries like Colombia and Peru.

36. Colombia's administration of justice was characterized by notorious impunity and by the existence of specialized jurisdictions that restricted judicial guarantees, thereby weakening its independence and impartiality. Only about 20 per cent of the crimes committed in Colombia were reported to the authorities, while only 4 per cent were resolved by a sentence. In such circumstances, the Colombian people could have no confidence in their judicial system. Impunity with respect to human rights violations was even more prevalent. The military justice system rarely sanctioned members of the armed forces involved in violations, instead creating obstacles to the trial of members of the military and police by ordinary judges, even in cases of crimes against humanity. It also ignored the recommendation made by the United Nations Special Rapporteur on summary or arbitrary executions in paragraph 67 of his report on Colombia (E/CN.4/1990/22/Add.1), that the Government should remove from service all agents involved in notorious violations.

37. By an emergency decree of July 1992, the Government had suspended habeas corpus for crimes of drug trafficking and terrorism, and sought to make that suspension a permanent measure, thereby ignoring the recommendation contained in paragraph 134 of the report on Colombia by the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1989/18/Add.1)

38. Between 1979 and 1991, there had been 515 cases of violence against judges and lawyers in Colombia, 329 of them cases of murder or attempted murder - an average of 25 cases every year. Contrary to popular belief, drug-related violence was not the main cause of those crimes. Of the 240 cases in which the author or motive was known, 58 were attributed to drug trafficking, 80 to paramilitary groups, 48 to State agents, 32 to guerrilla forces and 22 to other factors.

39. Impunity in cases of violence against judges and lawyers reached truly alarming levels. Almost 98 per cent of such crimes went unpunished. Only 12 cases had terminated with a sentence. In 80 per cent of the cases it had not even been possible to establish the existence of a criminal case. To confront the violence against judges and lawyers, a Judicial Branch Security Fund (Fondo de Seguridad de la Rama Jurisdiccional) had been set up in August 1989. That measure, however, had come 10 years too late, and the Fund in any case had inadequate financial and administrative resources.

40. Under emergency laws that had been converted into permanent legislation in 1991, a public order jurisdiction had been established to deal with crimes of drug trafficking and terrorism. In order to protect justice, the identity of judges, witnesses, evidence and judicial police agents had been made secret, thereby endangering the right to due process. In some cases, the norms applied violated the presumption of innocence. While those measures offered greater security for a small group of judges, most members of the judicial branch still lacked protection. Only an adequate judicial system based on democracy and recognized by the citizenry could afford members of the judicial branch the protection they had lacked for more than 13 years in Colombia.

41. In Peru, the breakdown of constitutional rule on 5 April 1992 and the measures adopted by the de facto Government with respect to the judicial branch had removed its indispensable independence, precipitating the worst-ever crisis in the administration of justice. Since that date the executive branch had removed, without due cause, more than 200 magistrates, including members of the Supreme Court, the Department of Public Prosecutions, the Constitutional Guarantees Court and the National Council of the Judicial Branch, replacing them with "provisional" judges who did not fulfil minimum constitutional and legislative requirements. In addition, it had enacted a series of legal provisions that violated fundamental rights and guarantees of members of the legal community and of the population as a whole. Magistrates had been denied the right to appeal against legal provisions removing them from their functions, and lawyers had been forbidden to represent more than one person accused of terrorism at national level. Those new restrictions compounded the already chronic insecurity faced by judges, prosecutors and lawyers, who were subject to constant threats and attempts against their lives and those of their families, especially by Sendero Luminoso. Recently, in an attempt to counter the barbaric actions of that organization, the Government had announced its decision to try persons accused of terrorism under the military justice system. That measure was unacceptable within a legal democratic order. Furthermore, in view of the record of the military courts in Peru, there was no guarantee that the trials would be effective, let alone impartial.

42. The measures taken since 5 April 1992 by the de facto Government in the field of the administration of justice had not solved its problems or improved that essential service. On the contrary, problems such as procedural delays, the inadequacy of many of its members and the impunity of human rights violations had worsened. The need to reform the administration of justice in Peru was more urgent than ever. Guarantees of its independence and provision of sufficient material resources and adequate magistrates were basic elements for progress towards an autonomous and efficient branch capable of offering the legal security needed for the development of social life and the full respect of fundamental human rights.

43. Mr. DI TIRO (Liberation), speaking on agenda item 10 (a), said that since 27 December 1949 Acheh/Sumatra had been illegally occupied and colonized by the Javanese Republic of Indonesia. Before that date his people had been an independent and internationally recognized sovereign nation for thousands of years.

44. On 23 August 1991 he had addressed the Sub-Commission at its forty-third session, on the use of the judiciary by the Indonesian regime to suppress the Liberation Movement of Acheh/Sumatra; and on 29 January 1992 he had raised the issue at the forty-eighth session of the Commission on Human Rights in the context of the right of peoples to self-determination and its application to the peoples under colonial or alien domination. No action had been taken by the Sub-Commission or by the Commission on Human Rights with a view to solving the problems to which he had drawn attention in his submissions, namely, massive violations of human rights and of the right to self-determination of the Achehnese people, that had led to the deaths of more than 20,000 Achehnese civilians at the hands of Javanese Indonesian occupation troops. In terms of

loss of human lives and indifference on the part of the international community, the situation in Acheh appeared to be worse than that in Bosnia and Herzegovina.

45. In the course of 1990 and 1991, about 2,000 Achehnese boat people had managed to reach the shores of neighbouring Malaysia, assuming that, in view of the shared historical, cultural, social and religious heritage of the Achehnese and the peninsular Malays, they would find a welcome there. That assumption had proved to be wrong. Some 600 Achehnese refugees seeking political asylum had immediately been arrested, charged with illegal entry, imprisoned in deplorable conditions or in solitary confinement, and subjected to physical and mental torture. After more than a year, about 300 of the refugees had been forced to return to Indonesia, escorted by Indonesian intelligence agents. On arrival in Indonesia, many had been murdered or had disappeared. The task of establishing how many had suffered that fate might appropriately be entrusted to the Sub-Commission's Working Group on Disappearances.

46. On 20 June 1992, 43 of the fugitives had decided to seek refuge at UNHCR's Kuala Lumpur office. The UNHCR representative had recognized the 43 as refugees requiring protection under its mandate. Despite that praiseworthy initiative, the Deputy Prime Minister of Malaysia continued to insist that his Government would not recognize the refugee status accorded by UNHCR to the Achehnese asylum-seekers, and was still insisting on their repatriation to Indonesia, on the grounds that there was no evidence that the situation in Indonesia justified granting them asylum. That view was contradicted by reports from such reputable independent sources as the Indonesian Legal Aid Foundation (July 1991), TAPOL (British Campaign for Human Rights in Indonesia: "Mass Killings in Acheh", 27 June 1991), Asia Watch ("A Commission of Inquiry for Acheh", 19 February 1992), Amnesty International ("Urgent Action: Fear of Refoulement", 9 October 1991), the Parliamentary Human Rights Group ("Acheh: A New Birth of Freedom", 1 May 1992); and by a United Kingdom House of Commons motion on Achehnese refugees of 22 June 1992.

47. The Indonesian military were currently killing the last remaining eyewitnesses to the massacres of the Achehnese, in an all-out effort to obliterate all evidence. In effect, Malaysia was conniving in that effort by returning those refugees to Indonesia. They had managed, by dint of their political will, to reach the UNHCR office in Kuala Lumpur in order to make their voice heard in the Sub-Commission. He appealed to the Sub-Commission not to allow them to die, taking with them direct evidence of hidden genocide perpetrated by Indonesia in Acheh. For, since as far back as 1965, Indonesia had murdered more people, in an expanse of territory as large as continental Europe, than had died in all other known massacres in recent history. And it continued to implement that policy, thanks to the massive and unconscionable subsidies it received from Japan and Western European States, ostensibly for "economic development".

48. The 43 prisoners of conscience at the UNHCR office in Kuala Lumpur should be immediately invited to come to Geneva to testify before the Sub-Commission about the hidden genocide perpetrated by Indonesia. Alternatively, the Sub-Commission should dispatch a special rapporteur to Kuala Lumpur to

interview the 43, and the 300 other witnesses held illegally in Malaysian jails, before they were forcibly deported to the killing fields in Indonesia.

49. If jails and detention camps in the former Yugoslavia were subject to international inspection, why should the same not apply to Malaysian and Indonesian jails and detention camps where innocent Achehnese refugees were inhumanely detained, starved and tortured? After the events in Bosnia, Croatia and Slovenia, Serbia had been boycotted diplomatically and economically by the West. Yet after the events in East Timor, Acheh/Sumatra and West Papua, Indonesia continued to receive massive credits, to the tune of US$ 5 billion, from certain western States.

50. Mr. FORBES (War Amputations of Canada), speaking on agenda item 10 (a), reminded experts that in May 1987 his organization, in association with the Hong Kong Veterans' Association of Canada, had submitted the first of a number of formal claims to the Commission on Human Rights under the 1503 procedure. Those communications had concerned the gross violations of the human rights of Canadian servicemen held as prisoners of war by the Japanese during the Second World War. In 1990 and 1991, further claims had been submitted on behalf of prisoners of war and civilian internee organizations representing the United Kingdom, the United States, the Netherlands, New Zealand and Australia. The consolidated claim was submitted on behalf of more than 200,000 former prisoners of war, civilian internees, or their widows. Furthermore, the claim by the so-called Korean comfort women against the Japanese Government was also currently before the United Nations. The allied prisoners of war and civilian internee organizations wished to voice their full support for that claim, which raised issues of international law in many ways parallel to the legal principles involved in the claim brought by the allied prisoners of war and civilian internees.

51. The final report of the Sub-Commission on its forty-third session (E/CN.4/Sub.2/1991/65) contained an unprecedented public statement with regard to those claims for compensation. His organization was now requesting the Sub-Commission seriously to reconsider the implications of that statement; for it was his organization's considered opinion that the decision of the Sub-Commission was seriously flawed in its interpretation of international law, both with regard to the claims for compensation, and also with regard to the application of the resolution 1503 procedure.

52. The Judgement of the International Military Tribunal for the Far East delivered in November 1948 regarding the war crimes and atrocities committed by the Japanese made it clear that the regulations for the administration of prisoner of war camps had issued from the Japanese War Ministry. Those regulations had resulted in the death in captivity of 27 per cent of the United States and United Kingdom forces captured by the Japanese, as compared to a figure of 4 per cent for those taken prisoner by the German and Italian armies.

53. The Japanese Government had consistently taken the position that any compensation to be paid had been provided for in the Peace Treaty entered into between Japan and the Allied Powers in 1952. In his organization's submission, however, international law supported the contention that the individual human rights of those prisoners of war and civilian internees were

not affected by the Peace Treaty since the governmental representatives of the countries that were signatories to the Treaty had had no legal authority or mandate to waive those basic rights. His organization had further argued that those fundamental human rights did not fall under government jurisdiction, and that the claim was thus not affected by the provisions of the Peace Treaty. Furthermore, it was well recognized under international law that the principle of jus cogens was applicable to the 1952 Peace Treaty. International legal scholars acknowledged that humanitarian law as a whole was jus cogens, and that any treaty conflicting with such a norm became void and inapplicable.

54. In the summer of 1991 the Working Group on Communications had considered those claims en bloc, pursuant to the 1503 procedure. Notwithstanding the confidential nature of the procedure, the Working Group had issued as part of its report to the Sub-Commission a formal statement, subsequently adopted by the Sub-Commission, contained in paragraph 274 of the report of the Sub-Commission on its forty-third session (E/CN.4/Sub.2/1991/65), in which it expressed the view that the procedure governed by Economic and Social Council resolution 1503 (XLVIII) could not be applied as a reparation or relief mechanism in respect of claims of compensation for human suffering or other losses which had occurred during the Second World War.

55. The Sub-Commission must seriously reconsider the consequences of its issuance of that public statement, since they pertained not only to the consolidated claims, but also to the fundamental human rights of all individuals subjected to detention or imprisonment. In particular, the Sub-Commission should consider four specific aspects of its public statement.

56. First, the statement implied that the communications brought on behalf of the prisoners of war and civilian internees related to their experience during the Second World War, and that the claims were thus beyond the jurisdiction of the Sub-Commission. However, that position was not supported by international law. The claims in question were acknowledged to relate to war crimes, crimes against humanity and grave breaches of the Geneva Conventions. It was well established that under international law such crimes were not subject to any form of statutory limitation, as was confirmed by the 1968 United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and reaffirmed in the study submitted to the 1990 session of the Sub-Commission by Mr. van Boven (E/CN.4/Sub.2/1990/10).

57. Secondly, while the crimes had been committed 45 or 50 years previously, their effects lingered, and those residual disabilities continued to have a devasting impact on the lives of the victims.

58. Third, Germany had continued to pay restitution claims for the entire period from the termination of the Second World War. By 31 December 1986, the Federal Republic of Germany and the individual German States had paid more than DM 78 billion in restitution to individual victims of the Nazi regime and it was estimated that a further DM 23.9 billion would be spent for the same purpose by the year 2000.

59. Fourth, from the outset, his organization had recognized that the 1503 procedure was limited as to the specific authority given to the Sub-Commission to cite a country which had committed a consistent pattern of gross violations

of human rights. The employment of that procedure would, however, be an integral first step to the ultimate obtaining of appropriate compensation. Once the potential citation of Japan had been established under resolution 1503, general international law, including the specific provisions of the Geneva Conventions, would support the further obligation for the payment of compensation by Japan.

60. He therefore urged the Sub-Commission to reconsider its position and make a specific finding to the effect that the war crimes and crimes against humanity committed by the Japanese during the Second World War revealed a consistent pattern of gross violations of human rights and that the Japanese Government should be strongly encouraged to establish an International Compensation Fund for the purpose of indemnifying the individual victims of those gross violations of human rights. Such an International Compensation Fund should be administered by the United Nations or by an international agency such as the International Committee of the Red Cross. Such action by the Sub-Commission would have a significant influence in compelling the Japanese to satisfy their legal, moral and humanitarian obligations in relation to those outstanding compensatory claims.

61. Mr. HUMPHREY (The War Amputations of Canada) said that, as a former Chairman of the Sub-Commission, he considered that the Sub-Commission had committed a great mistake when, at its previous session, it had failed to forward to the Commission on Human Rights a petition relating to prisoners of war in Japan on the grounds that the Sub-Commission did not have the power to deal with any matter relating to the Second World War. That argument was pure nonsense; it was the Second World War that had provided the catalyst for the new world law of human rights. To argue that the Sub-Commission could not deal with matters allegedly revealing consistent patterns of gross violations of human rights if those patterns related to the Second World War would be to challenge the very heart and basis of the new world law of human rights.

62. He recalled that he had drafted the Sub-Commission resolution that had become the basis for Economic and Social Council resolution 1503 (XLVIII) and that neither he nor his colleagues in the Sub-Commission at that time had wished to impose any restrictions on the scope of what was to become resolution 1503.

63. He was curious to know whether the precedent created by the Sub-Commission at its previous session would prevent it from taking any stand in the matter, for example, of the so-called comfort women, probably one of the worst violations of human rights that had ever happened. Council resolution 1503 (XLVIII) was one of the most useful international mechanisms for the implementation of human rights and fundamental freedoms and the question which arose was whether the Sub-Commission would go down in history as having weakened it.

64. Mr. ANDREU (International League for the Rights and the Liberation of Peoples), speaking on item 10, said that the impunity granted to the perpetrators of crimes against humanity and grave violations of human rights was not only contrary to international law but represented a direct and flagrant violation of the obligation of States to investigate, try and punish those responsible for such crimes. Furthermore, impunity encouraged the

repetition of violations as in the case of Maurice Papon who had committed crimes against humanity as Secretary-General of the Gironde Prefecture during the Nazi occupation of France and later, in 1961, as Prefect of Paris, had been responsible for the murder or disappearance of many Algerians and, a few months later, for the Charonne massacres. The impunity of members of the repressive Franco regime granted under the Amnesty Law of 1976 had enabled Manuel Ballesteros García and Jésus Martinez Torres, who had been guilty of human rights violations as members of the notorious Political and Social Brigade, to become involved later in paramilitary activities.

65. The impunity extended to the French military for crimes against the Algerian people had encouraged the acceptance of torture as an instrument of the State. The defence of torture by Colonel Roger Trinquier had for many years past been a compulsory text in many Latin American military academies.

66. Impunity encouraged State terrorism as had been demonstrated in the investigation by a Belgian Parliamentary Commission of the 1982-1983 Brabant massacres and in the 1980 Bologna and P-2 Lodge cases in Italy. The investigations had uncovered the existence of extreme right-wing terrorist networks created by the intelligence services in cooperation with war criminal groups whose members had been granted impunity. The policy of impunity adopted by the United States towards the crimes against humanity perpetrated by Klaus Barbie so that they could be redeployed for use in repressive strategies in Latin America was another example. Such activities were the consequences of impunity and called for the urgent attention of the international community.

67. Political arguments had been used to justify impunity for crimes against humanity and grave violations of human rights as currently in the Côte d'Ivoire and earlier in Argentina and Uruguay, where amnesty laws for such crimes had been justified on the grounds that they were the necessary price of the transition to democracy or for the preservation of social peace. Reasons of State appeared to have been the reason why the murderers of Kazem Radjavi, a member of the Iranian national resistance movement assassinated in Geneva on 24 April 1990, had gone unpunished.

68. The obligation of States to punish crimes against humanity and serious violations of human rights was not negotiable, neither could it be waived for reasons of political interest.

69. Impunity for the crimes of the past guaranteed their repetition in the future. Impunity for the perpetrators of the Moramanga massacre in Madagascar in March 1947 appeared to have been a precedent for the August 1991 massacre of peaceful protestors in front of the Presidential Palace.

70. The problem of impunity for crimes against humanity and grave violations of human rights merited the serious attention of the Sub-Commission. His organization therefore urged the Sub-Commission to appoint an expert on impunity to study the issue in depth and propose measures for the elimination of that obstacle to the full enjoyment of justice and human rights.

71. Ms. PERREGAUX (Centre Europe-Tiers Monde), speaking on item 10, said that her organization wished to draw attention to three cases of serious violations of the international covenants that codified conditions for arrest, trial and imprisonment.

72. Prisons in Madagascar were overcrowded: the Antananarivo prison, with a capacity for 800 persons, currently held about 4,000; adults, minors and criminal elements were huddled together in conditions of appalling hygiene, malnutrition and sickness; 10 deaths occurred daily. Half of those held were awaiting trial and the wait might be as long as 10 years.

73. The situation in Turkey was equally alarming. In 1991, 152 persons had died in suspicious circumstances. During the first six months of 1992, 179 cases of torture, including 32 women and 6 children, had been reported; 9 detainees had died from police torture and 2 had disappeared. On 31 March 1992 the constitutional court had decided to suspend article 15 of the "anti-terror" law which had granted the protection of the State to official torturers; that decision had not yet been implemented.

74. For several years past, her organization had drawn the attention of the Sub-Commission to its concern regarding serious violations of human rights in Morocco and Western Sahara occupied by Morocco. Together with the Committee to combat repression in Morocco, the Association of relatives and friends of disappeared persons in Morocco and the Association for the defence of human rights in Morocco, her organization had decided to invite a survivor of Tazmamart to address the Sub-Commission.

75. Mr. Ali BOUREQUAT (Centre Europe-Tiers Monde) said that he and his two brothers were French citizens who lived in Morocco. They had been taken from their home on 8 July 1973 and no reason had ever been given for their arrest. On 30 December 1991, 18 years later, they had, for the first time, been brought before a Moroccan judicial authority and informed that they were free.

76. He had been interrogated and tortured by Police Commissioners Ben Mansour and Ben Cherif in the presence of the highest military and civilian authorities of the Kingdom, including General Moulay Hafid Alaoui, Minister of the Royal Household, Colonel Housni Ben Slimane, Commander of the Household Police and Colonel Ahmed Dlimi, Chief of the security services. Together with his brothers, he had been imprisoned in the PF3 secret detention centre where Lieutenant-Colonal Mohamed Ababou, Cadet Mzireg, Captain Chellat, Chief Warrant Officer Akka Harrouch and trade unionist Houcine El Manouzi were also being held. On 13 July 1975 the group had attempted to escape but, with the exception of Akka Harrouch who had been shot down, they had been recaptured the same day. Following the escape attempt, his mother and sister had been arrested and held in various secret centres until the end of November 1976.

77. On 23 March 1981 he and his brothers had been transferred to the Tazmamart prison which was a veritable extermination camp. Other disappeared persons held in Tazmamart included military personnel who had been condemned for two attempted coups d'etat. It was only in 1981 that humanitarian organizations had discovered that those military personnel were in Tazmamart.

He and his brothers had lived for 10 years, and the military personnel for 18 years, in barbaric conditions in concrete cells measuring 3 by 2 metres with a platform for a bed, a hole in the ground as a toilet, 14 air holes and 3 litres of briny water every 24 hours, in total darkness, lacking hygiene, medicine, exercise and clothing. They had been put there to be exterminated; as proof thereof 31 of the military personnel out of 59 had died there. It was a miracle that they themselves had survived. Their survival had been due to the extraordinary mobilization of humanitarian organizations, the work of the United Nations Human Rights Committee and the pressure applied by the United States on the Government of King Hassan II. Throughout their captivity, their own country, France, had remained silent, apparently for reasons of State. As far as they knew, only Madame Danielle Mitterrand had made representations on their behalf to the King of Morocco.

78. He urged the Sub-Commission to ascertain from the Government of Morocco the fate of their disappeared companions, Ababou, Chellat, Mzireg, Houcine El Manouzi, Abdelhak Rouissi and Kacem Ouazzane. There were other Tazmamarts in Morocco including Kalaat M'gouna, Agdès, Beni Tadjit and 11 secret detention centres in Rabat alone. Those also must be opened up.

79. The international community could not remain silent and must urge the Moroccan authorities to respect the laws which they had themselves promulgated and the international instruments and conventions which they had signed. Finally, it would moreover be highly inappropriate to associate that country or any of its officials with the organization of the World Conference on Human Rights in 1993.

80. Ms. SCHERER (Amnesty International), speaking on item 10, said that Governments often justified resort to states of emergency on the grounds that they were protecting national security, the rule of law, or even fundamental human rights. It was, however, a tragic irony that the worst violations of human rights, including torture, "disappearances", summary or arbitrary executions and arbitrary detentions, occurred most frequently during a state of emergency.

81. In proclaiming a state of emergency, a Government was still bound by the rule of law but too often Governments ignored the limits laid down in national and international law on when a state of emergency could be proclaimed and the permissible scope of emergency powers. The granting of wide discretionary powers to the executive and security forces during a state of emergency made it all the more important that the judiciary should remain independent and enjoy unhindered authority to act according to national and international law. Unfortunately that was often not the case.

82. In Myanmar, on the pretext of maintaining public order, vague and sweeping martial law decrees had resulted in hundreds of people being extrajudicially executed while thousands had been arbitrarily detained and tortured. The only crime of many had been advocating a peaceful transfer of power. In Sudan, the state of emergency declared after a military coup in June 1989 had heralded a purge of the judiciary and the supplanting of normal courts by military tribunals which had convicted people after unfair trials. Remedies such as habeas corpus were essential to protect detainees' fundamental human rights. Emergency measures sometimes curtailed judicial

authority and access to the courts. In Egypt, emergency measures could delay access to a court for at least 30 days after arrest, thus facilitating the torture of many detainees. Courts frequently ordered release but were often opposed by the Interior Ministry, until a second court could confirm the release, possibly weeks or months later.

83. A state of emergency was by definition a temporary legal response to an exceptional and grave threat to the nation. It was therefore disturbing when a state of emergency became virtually permanent because it had been proclaimed once and never lifted, or repeatedly renewed. In such situations human rights violations could become a permanent state of affairs. Such was the case in Syria where, despite the recent release of approximately 2,000 political prisoners, the practice of arbitrarily detaining thousands of people without charge or trial, often incommunicado, had continued under a state of emergency declared nearly 30 years earlier.

84. In Amnesty International's experience, violations of the non-derogable rights to life and freedom from torture occurred most frequently during an emergency when security forces were given licence to maintain public order with no effective executive, legislative or judicial control. In Peru there was a causal link between sweeping powers given to the military in areas under emergency control and gross human rights violations committed with impunity, including disappearances, mass killings and torture. Amnesty International was concerned that the executive decrees issued since the dissolution of Congress in April 1992 might have helped to perpetuate the cycle of human rights violations. In India, security forces had been given extraordinary powers in those States where the Government faced increasing violent opposition, including powers to shoot to kill with immunity from prosecution and powers to detain without charge or trial.

85. One of the most widely abused rights was the right to liberty. In Sierra Leone, where a state of emergency had been declared after a military coup in April 1992, people associated with the former Government were being held without charge or trial, under a proclamation giving the National Provisional Ruling Council virtually unrestricted powers of detention which could not be challenged in any court.

86. Amnesty International had noted with interest the Special Rapporteur's draft guidelines for the development of national legislation on states of emergency (E/CN.4/Sub.2/1991/28/Rev.1) and looked forward to their further elaboration. Such guidelines would be useful, for example, in countries of the Commonwealth of Independent States, where Amnesty International had been concerned about the possible impact on human rights of the many states of emergency which had been proclaimed with few adequate controls in national law.

87. Amnesty International welcomed the expansion in the guidelines of a core set of rights which could never be suspended, in particular, the steps taken towards making non-derogable the safeguards necessary to ensure a fair trial. It also welcomed the recent Commission on Human Rights resolution 1992/35, which called on States to introduce the vital safeguard of habeas corpus, amparo or similar mechanism and to ensure that it could never be suspended. It urged the Special Rapporteur to monitor and report on the implementation of that resolution.

88. Amnesty International had noted the Special Rapporteur's intention to give both Governments and non-governmental organizations the opportunity to comment on information supplied by the other and would encourage him to develop that procedure as well as his innovative "emergency communication system" and to include full details in his annual reports. Amnesty International also considered that a deeper understanding of the impact on human rights of states of emergency and possible solutions could be achieved if the Special Rapporteur reinstituted the practice of analysing each year the relevant law and practice of one or more countries.

89. Mrs. Ksentini took the Chair.

90. Mr. PARTOW (Arab Organization for Human Rights) said that 1991 would probably be remembered as the year when peace, as defined by the "new world order", came to the Middle East. Unfortunately, however, 1991 was the year when unprecedented human rights violations continued to be committed by Israel on the Arab soil of the occupied territories. Even the election of the alleged "dove", Yitzhak Rabin, to be Prime Minister of Israel, had provided no real hope. Humanity had forgotten that some of the worst abuses of Palestinian rights had been committed under a Labour Government and by Rabin himself, as Minister of Defence and that Israel's dreaded extrajudicial death squads had been created under his authority.

91. The general deterioration in the human rights situation in the occupied territories had been aggravated by the cumulative effect of four years of the brutal and inhuman suppression of the intifada. Because of its scale and intensity, that suppression must be regarded as a crime against humanity.

92. Israel had repeatedly asserted that the Geneva Conventions did not apply to the occupied territories, which should be treated as a "special case" in that they were subject to special rules and regulations and that human rights there should be judged accordingly. That situation had eliminated any possibility of legal recourse and the Israeli High Court of Justice had continually sanctioned practices which were internationally recognized as being illegal.

93. One of the most important violations in that regard was the confinement, usually incommunicado, of those arrested without any charge, for up to 18 days. In many of those cases prisoners were not allowed to see either a lawyer or family members during periods in excess of 30 days. The large number of those arrested illustrated the practical impossibility of giving a fair trial to each of the detainees. According to his organization's recently published annual report, 75,000 Palestinians had come before the Israeli military courts since the start of the intifada, representing an average of 1,750 per month. Of the total, only 5,000 to 7,000 had been found innocent.

94. Concerning the right to a fair trial, the most important development of 1991 had been the acknowledgement by the Israelis of the existence of the dreaded death squads operating in the occupied territories, which represented a terrible violation of the right to a fair trial for those Palestinians sought by the Israeli authorities. Since January 1991, at least 34 Palestinians had been killed by such officially sanctioned extrajudicial units, the latest such incident having taken place in

March 1992, when a group of undercover soldiers had killed Jamel Ghanem, who had been wanted by the authorities. Thus, more than 30 per cent of those killed by the Israelis in that same period had been the victims of those extrajudicial squads. The absence of an investigation following such acts and their increasing frequency implied a shift in Israeli policy in support of such killings.

95. The year 1991 should be remembered not as one in which peace had come to the region, but as one in which Israel had admitted its ill-treatment of Palestinian detainees. Various reports published by Israeli human rights groups and articles in the Israeli press had all focused on the continual torture and ill-treatment of Palestinian detainees. It should be recalled that the infamous Landau Commission, whose inquiry into allegations of the torture of Palestinians had been made public by human rights groups, had reached the conclusion that moderate physical and psychological pressure should be allowed during the interrogation of Palestinian detainees, despite the fact that the use of any form of pressure was strictly prohibited by international human rights instruments.

96. Human rights organizations, including his own, had repeatedly warned that torture in the occupied territories had become routine. That development had become more serious since the start of 1991, because there was increasing evidence of complicity between the military courts and the interrogators. Military judges were not only approving torture but also accepting evidence extracted during torture "sessions". In a particularly appalling case, the Palestine Human Rights Information Centre reported that the military judge Yonatan Livneh had accepted evidence obtained through the use of electric shocks on Nidal Abu Assab, which he had justified by referring to the recommendation of the Landau Commission that electric shocks were to be considered a form of "moderate physical pressure". In another case, that of Mustapha Akawi, who had later died in detention on 4 February 1992 following torture and other ill-treatment, the military judge had refused to accept allegations of ill-treatment brought forward by the defence, despite obvious signs on the detainee's body. In all, 30 Palestinians had died in detention.

97. Mr. BOURDON (France-Libert«s: Fondation Danielle Mitterrand) speaking also on behalf of the International Federation of Human Rights (FIDH) on items 10 and 11, expressed deep concern at the worsening human rights situation in Turkish Kurdistan. There had been serious interference in the administration of justice; torture was employed systematically, making a fair trial impossible; the independence of the judiciary and the free exercise of the legal profession had been the targets of grave violations; death squads had proliferated, and dozens of persons had been the victims of summary executions; and those responsible for human rights violations in Turkish Kurdistan had enjoyed complete immunity.

98. Mandated by the FIDH, he had travelled to Diyarbakir in Turkey from 5 to 7 July 1992 to attend, as a legal observer, the trial of Mr. Yavuz Binbay, President of the Association of Human Rights (Van section), and 58 other accused before the Diyarbakir Tribunal of State Security. All the accused had been released, and Mr. Binbay, upon his release, had said that he had received threats from the death squads. The 58 persons arrested at the same time as Mr. Binbay, including minors, had all been tortured.

99. He had succeeded in talking to lawyers and officials of the Diyarbakir Association of Human Rights, as well as with journalists and parliamentarians, on the current human rights situation in the region. The lawyers had unanimously denounced the fact that since the entry into force of the new anti-terrorism law on 12 April 1991, the lack of independence of judges, particularly military judges in Tribunals of State Security, had been more striking than ever. During the above-mentioned trial, it had emerged that the accused, including the minors, had all been "presumed guilty". The persons interviewed had all denounced the systematic use of torture against persons held in custody in police stations and at military baracks, as well as the use of torture for "preventive" reasons.

100. According to information he had received, a doctor who had produced a medical certificate describing cases of torture had subsequently been the target of death threats by the military. At another trial before the Tribunal of State Security, he himself had witnessed how a person had asked the Tribunal to record a document certifying that he had been tortured and that his confession had thus been extracted by force; the request had been refused. All those interviewed had stated that at no time had the tribunals registered protests by the accused that they had been tortured and that their confessions had thus been extracted by force.

101. The lawyers were in a difficult position, because if they pursued the matter, it might lead to an even more severe verdict for their clients, and they might even be identified as being in favour of the "Kurdish cause", which would expose them to threats. According to the lawyers, there had not been any effort to identify or punish those responsible for torture, despite reliable evidence. For example, Mr. Binbay had shown him a letter from the Ministry for Justice of Ankara reporting on a decision of the prosecutor of Van of 28 April 1992 rejecting the allegation of torture made by Mr. Binbay on 9 April 1992. It had not been observed that any court had made a request for a legal expertise. It was thus fair to conclude that those responsible for torture and mistreatment enjoyed total immunity.

102. It would appear that torture ceased following incarceration in prison, although in certain cases, such as that of Mr. Hassan Guldal, arrested on 23 May in Savsat, persons had died in detention after having been tortured in a police station.

103. Over the past 12 months the numbers of civil and paramilitary commandos responsible for a large number of disappearances and summary executions had been on the rise. Virtually every day, human rights associations had received information on killings by unidentified persons of human rights advocates, villagers and journalists (8 reporters having been killed since the beginning of 1992).

104. The documents that he had received would appear to indicate that the rate of summary executions had increased since July 1992. Persons interviewed had confirmed that although some of the persons responsible for those killings had been clearly identified, no accusation had ever led to a conviction. There was also general agreement on links between some of the paramilitary commandos and the police and security forces. Those persecuted were persons who directly or indirectly supported the Kurdish cause.

105. The general sentiment was that the human rights situation had worsened but was being disregarded by the international community.

106. Kurdish jurists had noted with bitterness that although Turkey had ratified the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the international Covenants, that seemed to be of only abstract importance. Moreover, the reservations entered by the Government of Turkey to articles 5 and 6 of the European Convention on Human Rights concerning the prohibition of arbitrary arrests and the right to a fair trial, as well as the state of emergency, the widespread application of the law of 12 April 1991 and the general immunity for human rights violations, had reduced Turkish Kurdistan to a region where there was no law.

107. It was to be hoped that the Sub-Commission would draw the necessary consequences on that tragic situation as soon as possible.

108. Mr. Alfonso Martínez resumed the Chair.

109. Ms. PARKER (International Educational Development) drew attention to the violations in the United States of America of the right to a fair trial.

110. The case of United States versus Alvarez was a blatant violation of that right. United States agents had entered Mexico and kidnapped Dr. Alvarez in his medical office in Guadalajara, had flown him back to El Paso and had arrested him on arrival. By upholding that action, the United States court's had effectively opened the door to further kidnappings and closed the door on the judicial remedies enshrined in the Universal Declaration of Human Rights. Extra-territorial kidnapping was an act of terrorism, a crime against humanity and an act that contravened many principles of jus cogens, including the concept of national sovereignty. The Alvarez ruling buttressed the questionable "legality" of the seizure of the former President of Panama, a situation that should rightly trouble all other Governments, especially those that had disputes with the United States. The Alvarez case was also troubling because the victim's own country, Mexico, had actively sought his return.

111. In another case involving the United States, Mr. Cesar Joya Martinez, a member of the Salvadorian military forces who had fled that country rather than commit the kidnappings and killings ordered by his superiors, had had the dubious honour of being the only person arrested and prosecuted for "illegal re-entry". His request for non-refoulement (non-return), based on the danger to his life, was in legal limbo. The United States had seized him within one hour of his release on bail, maintaining that he was subject to extradition to El Salvador, although no request had been made at the time. He had been in custody in the United States ever since. Clearly, the United States wanted to silence him by keeping him behind bars, especially since he sought to testify to human rights organizations, including the Sub-Commission.

112. In the case of the people fleeing Haiti, the United States was committing the crime of piracy on the high seas, a racially motivated action aimed at preventing Haitians from presenting claims for asylum or non-return under applicable international refugee and human rights law. The Sub-Commission

must endorse the criticism that the United Nations High Commissioner for Refugees had levelled against the policy of the United States towards the Haitians.

113. In its request for the extradition from Canada of Leonard Peltier, still in prison despite all national and international appeals, the United States had openly misrepresented the case.

114. The increasing tendency on the part of the United States to reach beyond its borders or to manipulate jurisdiction in disregard for all international standards was not surprising for a Government that had defied the jurisdiction of the International Court of Justice, in violation of the Charter of the United Nations and the Statute of the Court. But it must be stopped.

115. Concerning Japan, the International Educational Development had submitted ample evidence to the Sub-Commission regarding systematic pre-indictment denial of counsel, including during interrogation, police custody that could last for several weeks and severe mistreatment and torture of many suspects. Despite his organization's 1989 report underscoring the gravity of the situation, the problem persisted; apparently, the Japanese version of criminal justice entailed arresting and convicting randomly selected individuals rather than seeking the actual perpetrators of crimes on the basis of reliable evidence. Japan must begin reforms to bring its legal system into line with the principle of the right to counsel from the moment of arrest and to the presence of counsel during the taking or signing of statements or any interrogation.

116. In China, torture, abuse and ill-treatment were common, especially during pre-indictment detention, which extended for two or even three years when "the circumstances were complex". Lawyers had no access until the charges were brought and the trial date fixed. Shackles and solitary confinement were widespread, as was the use of cattle prods. Prison guards appeared to be immune from investigation or prosecution. He welcomed the recent ruling of the Supreme People's Court allowing judicial remedies for administrative detention; but it must be recalled that administrative detention violated the Universal Declaration of Human Rights. He drew the Sub-Commission's attention to a document that the International Educational Development had made available on many problems in China's criminal justice system, and he urged the Sub-Commission to take public note of those violations.

117. The International Educational Development had also made available a statement on detention camps in the former Yugoslavia, including lists of the major camps in Serbia, Bosnia and Croatia. It would welcome Sub-Commission action in that area and urged it to provide the relevant materials, including those presented during the debates on those issues, to the Special Rapporteur of the Commission on Human Rights.

118. Mr. KHOURY (Observer for the Syrian Arab Republic) said that the written communication submitted by the International Federation of Human Rights (FIDH) under agenda item 10 (E/CN.4/Sub.2/1992/NGO/12) contained serious distortions of the facts. Whereas that communication had spoken of 3,000 disappearances, the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1992/18) had stated that the number of cases referred to his

Government had amounted to six, that there had been no cases at all in 1991 and that only two cases were pending. The communication had also maintained that the right to a fair trial was violated. His delegation wondered how a non-governmental organization (NGO) could make such a determination, but at the same time neglect to say that such trials had been public and had taken place in the presence of counsels for the defence. The defendants had been clearly accused of being members of an illegal political party engaged in violence against innocent citizens, who had been injured, in some cases suffering permanent disabilities. It was the victims of that violence who had instituted the court proceedings.

119. The communication had also alleged that torture had been practised, that health services were not provided for detainees and that families could not visit, a refrain repeated by certain NGOs for well-known reasons, but inconsistent with the aims of the Sub-Commission. It had also been maintained that some persons had been released following pressure exerted by NGOs. In actual fact, detainees and prisoners in his country might be released before the completion of their sentence for reasons of good behaviour.

120. There were no so-called prisoners of conscience, but prisoners convicted of having engaged in acts against the security of the State or of citizens; those individuals had received punishments commensurate with their crimes.

121. Turning to the report prepared by Mr. Joinet (E/CN.4/Sub.2/1992/25) on the independence of the judiciary and the protection of practising lawyers, he said that the note of the Centre for Human Rights had not been received by his Government until 14 July 1992. The allegations it contained would be communicated to the competent authorities for consideration and reply. It was to be hoped that Mr. Joinet and other special rapporteurs would await the reply of his Government before referring the allegations in their reports.

122. Turning to the statement made by Amnesty International, it appeared that that NGO had begun to adopt a selective approach that was not conducive to objectivity. The state of emergency in the Syrian Arab Republic must be analysed in the context of the historical, political, economic and social circumstances in that country and must take into account the impact of the foreign colonial occupation of Syrian territory, as well as of the internal and external challenges that the Syrian Arab Republic must face as a developing country. The state of emergency had been due to Israel's aggression and expansionism and its occupation of part of the territory of the Syrian Arab Republic. The state of emergency and martial law were only applied to a limited extent. The courts continued to apply the ordinary civil and penal codes.

123. Mr. DIOP (Observer for Senegal) said that the International Commission of Jurists had made an unfounded attack upon the judicial system of his country. As a visit to any courtroom would show, separation of the executive and the judiciary was a key part of Senegal's constitutional system. Furthermore, an important reform of the judicial structure had just been carried out to improve guarantees for the rights of individuals and to strengthen the principles of democracy.

The meeting rose at 6.10 p.m.